

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA08-970

J.P. JAYNES, SPECIAL
ADMINISTRATOR OF THE ESTATE
OF ARTHUR FENRICH

APPELLANT

V.

CITIZENS BANK OF BATESVILLE
AND TERRI BARNES LEWALLEN
APPELLEES

Opinion Delivered May 13, 2009

APPEAL FROM THE
INDEPENDENCE COUNTY
CIRCUIT COURT
[NO. CV-07-129-2]

HONORABLE JOHN NORMAN
HARKEY, JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

Appellant J.P. Jaynes, Special Administrator of the Estate of Arthur Fenrich,¹ appeals from orders approving and construing an amendment to a trust and denying appellant's motion to strike the amendment. The crucial question is whether a settlor and trustee had authority to make the disputed amendment to the trust instrument. We hold that the settlor and trustee did have such authority, and we affirm the trial court's denial of the motion to strike.

The cardinal rule in construing a trust instrument is that the intention of the settlor controls. *Aycock Pontiac, Inc. v. Aycock*, 335 Ark. 456, 983 S.W.2d 915 (1998). This intention is to be determined from the four corners of the instrument, considering the language used,

¹Mr. Fenrich died during the pendency of this appeal.

and giving meaning to all of its provisions whenever possible. *Id.* We consider every part of the trust instrument in determining the settlor's true intent, construing the words and sentences used in the instrument in their ordinary sense. *Bailey v. Delta Trust & Bank*, 359 Ark. 424, 198 S.W.3d 506 (2004).

Here, Kathleen Barnes and Fonteen Simmons created and later amended a revocable trust, of which they were both grantors and trustees. Arthur Fenrich was a beneficiary. After the death of Fonteen Simmons, Kathleen Barnes executed yet another amendment, changing Barnes's will and the revocable trust so as to give certain real property to Terri Barnes. The amendment also expressly stated that it was to replace all previous amendments to the will and trust.

The argument in this case hinges on whether Kathleen Barnes was authorized to amend the trust after the death of Fonteen Simmons. Appellant's argument that Kathleen Barnes was not so authorized is based on Article II of the trust instrument, which provides that:

Either Grantor may, from time to time, may [sic] revoke or amend this instrument, in whole or in part, but only by an instrument in writing "other than a Will" signed and delivered to the trustee during the lives of the Grantors.

When viewing this language in the context of the entire trust agreement, we cannot say that Article II reflects an intention to prohibit amendment of the instrument after the death of one of the grantors. Inspection of the instrument shows that the drafters' use of the singular and plural forms was not particularly precise with respect to the general clauses. For example, Article IV, dealing with payments from the trust, directs that "[t]he trustee shall pay

to the Grantors, during their life time. . . .” Certainly, the two grantors did not share a single lifetime. This is simply imprecise expression. But when the purpose of the trust required it, the drafter was very precise on this topic: Article V sets out what actions should occur upon “the death of a Grantor,” including payment of debt and funeral expenses. Article VI, in contrast, expressly deals with the composition of the trust “[a]fter the death of both Grantors.” The same language is used in Article VII, which concerns the purpose to which the trust assets will be put after the death of “both Grantors.”

We think that the grantors did intend to permit the surviving grantor to amend the trust after the death of the other grantor. Article IX, subsection (A) provides that “[e]ither KATHLEEN BARNES or FONTEEN SIMMONS, are authorized, individually, to act as trustee.” Furthermore, subsection (C) of Article IX provides that, without any conveyance or court order, any successor trustee “shall have all the powers granted to the original trustee.” This provision directly contradicts appellant’s assertion that the powers of the surviving trustee were reduced upon the death of the other trustee. Because we find in the trust instrument no manifest intent to prohibit a single survivor from exercising the power to amend conferred upon the grantors, *see Haggart v. Ranney*, 73 Ark. 344, 84 S.W. 703 (1904), we hold that the trial court did not err in refusing to strike the amendment made to the trust by Kathleen Barnes after the death of Fonteen Simmons.

Affirmed.

ROBBINS and MARSHALL, JJ., agree.